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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.106 of 2015

Order Reserved on : 1.5.2018

Order Passed on : 30.7.2018

Ramta Bai Sahu, aged about 50 years, wife of Shri Johan Ram Sahu,
resident of Raman Mandir Ward No.21, Fafadih, Raipur, Chhattisgarh

---- Applicant

versus

Johan Ram Sahu, aged about 60 years, son of Mahangu Ram Sahu, resident
of Village Jamgaon, Post Pahanda, Police Station and Tahsil Berla, District
Bemetara, Chhattisgarh

--- Respondent

and

Criminal Revision No.949 of 2014

Johan Ram Sahu, son of Mahangu Ram Sahu, aged about 60 years, resident
of Village Jaamgaon, Post Pahanda, Police Station and Tahsil Berla, Civil
and Revenue District Bemetara, Chhattisgarh

---- Applicant

versus

Smt. Ramta Bai Sahu, wife of Shri Johan Ram Sahu, aged about 50 years,
resident of Ram Mandir Ward No.21, Fafadih, Raipur, Civil and Revenue
District Raipur, Chhattisgarh

--- Respondent

For Ramta Bai : Shri Goutam Khetrapal, Advocate
For Johan Ram Sahu : Shri P.P. Sahu, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. Since both the revisions arise out of a common order, they are disposed of by this common order.
2. Both the revisions arise out of the order dated 19.11.2014 passed by the Principal Judge, Family Court, Raipur in Criminal M.J.C.

No.183 of 2014, whereby the Family Court has allowed the application under Section 125 of the Code of Criminal Procedure preferred by Ramta Bai (Applicant of Criminal Revision No.106 of 2015) and granted her maintenance of Rs.3,000/- per month.

3. Case of Ramta Bai is that her marriage was performed with Johan Ram at Raipur in April, 1985. Out of their wedlock, one daughter, namely, Seema was born on 2.3.1986. Till 2005, they resided together at Raipur as husband and wife. In 2006, Johan Ram left Ramta Bai and went away. Thereafter, Ramta Bai came to know that Johan Ram was already married. She is unable to maintain herself. Johan Ram is an Electrical Contractor and earns Rs.20,000/- to 25,000/- per month. He also owns 12 acres of agricultural land. In reply, Johan Ram pleaded that he never married Ramta Bai nor did Ramta Bai deliver any child from him. His marriage was performed with Kalindribai in the year 1976. Ramta Bai was residing in his house as a tenant. Since she is not his wife, he is not responsible to maintain her.
4. After taking evidence of the parties on record, the Family Court allowed the application of Ramta Bai vide the impugned order dated 19.11.2014 and granted her maintenance of Rs.3,000/- per month. Hence, Ramta Bai has preferred Criminal Revision No.106 of 2015 for enhancement of the maintenance and Johan Ram has preferred Criminal Revision No.949 of 2014 for setting aside the impugned order dated 19.11.2014 on the ground that Ramta Bai is not his wife.
5. Shri Goutam Khetrapal, Learned Counsel appearing for Ramta Bai submitted that though Kalindribai was the first wife of Johan Ram,

this fact was not in the knowledge of Ramta Bai and hiding this fact Johan Ram married Ramta Bai in April, 1985 and both were residing together as husband and wife and a child/daughter has also taken birth from their wedlock. Therefore, in the light of **(2014) 1 SCC 188 (Badshah v. Urmila Badshah Godse)**, in the instant case, the Family Court has rightly held that Ramta Bai is legally wedded wife of Johan Ram and has rightly granted her maintenance. He further submitted that looking to the earning capacity and financial status of Johan Ram, the maintenance of Rs.3,000/- per month granted to Ramta Bai deserves to be enhanced suitably. He placed reliance on **(2011) 1 SCC 141 (Chanmuniya v. Virendra Kumar Singh Kushwaha)**.

6. Shri P.P. Sahu, Learned Counsel appearing for Johan Ram submitted that Johan Ram had already performed marriage with Kalindribai in the year 1976 and this fact was within the knowledge of Ramta Bai. He further submitted that Ramta Bai had also first got married with another person and without obtaining any divorce from that person, if she got married with Johan Ram, her marriage with Johan Ram cannot be treated as legal marriage. Therefore, she is not entitled to get any maintenance from Johan Ram.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. In her Court statement, Ramta Bai has stated that in the year 1985, she was married to Johan Ram. She resided with him at Raipur for about 25-30 years. Thereafter, Deep, son of the first wife of Johan Ram came to them. Johan Ram started living along with son Deep separately from her in a separate house and she is living in the

house of Johan Ram. During cross-examination, in paragraph 4, she has categorically stated that when Johan Ram had married her, she did not know that he was already married. She has further stated that after 2-4 months of her marriage with Johan Ram, when she was pregnant, she came to know that Johan Ram was already married and he has also a son from his first wife. Then she went to Village of Johan Ram, namely, Jamgaon and met the first wife of Johan Ram. Her above statement is not rebutted by Johan Ram. Her statement is duly supported by her brother, namely, Ramgiri (Applicant Witness No.2) and her sister, namely, Sharda Bai (Applicant Witness No.3).

9. Though Johan Ram has deposed that he never performed marriage with Ramta Bai yet in paragraph 8 of his cross-examination, he has admitted that in 1990-91, Ramta Bai had come to his Village Jamgaon and called village meetings in the village showing himself as her husband. He has further admitted that 3 village meetings were convened and in all those meetings Ramta Bai was present. As per the pleadings and the statement of Johan Ram, Ramta Bai was residing in his house situated at Fafadih, Raipur as a tenant. In the year 1990-91, on being asked to vacate his house, she did not vacate his house. Then he himself left his house and went away and Ramta Bai is still living in his house. He has admitted that he has not initiated any Court proceedings for getting his house vacated from Ramta Bai nor has he lodged any complaint against her in this regard. From the above, it is also clear that had Ramta Bai really been a tenant of the house of Johan Ram, he would have made efforts to get his house vacated and lodged a report in the police station in this

regard, but he did not do so. Contrary to this, Ramta Bai went to the village of Johan Ram and there she called village meetings 2-3 times showing herself as wife of Johan Ram. Had marriage of Ramta Bai not been solemnised with Johan Ram, at the time of meetings called by Ramta Bai in his village, Johan Ram would have raised an objection to her showing as his wife and he would have lodged a report in the police station against her in this regard, but he did not do so.

10. Though Ramta Bai has admitted that she got first married at her age of 22 years yet she has not stated that with whom, when and where her said first marriage was performed. There is no pleading or evidence led by Johan Ram regarding any first marriage of Ramta Bai. Merely on the basis of admission of Ramta Bai that she was first married at her age of 22 years, it cannot be presumed that she had got first married with any other person. Therefore, the argument that Ramta Bai was already married before performance of her marriage with Johan Ram is not acceptable.
11. On minute examination of the statements and the other evidence available on record, it is clear that Johan Ram had performed marriage with Ramta Bai in the year 1985. Thereafter, they resided together in the house of Johan Ram situated at Fafadih, Raipur. Though Johan Ram had already performed marriage with Kalindribai in the year 1976, this fact was not in the knowledge of Ramta Bai at the time of her marriage with Johan Ram. In **Badshah case** (supra), it has been observed by the Supreme Court as under:

“13.2. *Secondly*, as already discussed above, when the marriage between Respondent 1 and the petitioner was solemnised, the petitioner had kept Respondent 1 in dark about his first marriage. A false representation was given to Respondent 1 that he was single and was competent to enter into marital tie with Respondent 1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that the respondents are not entitled to maintenance by filing the petition under Section 125 CrPC as Respondent 1 is not “legally wedded wife” of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 CrPC, Respondent 1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, (1988) 1 SCC 530 and *Savitaben Somabhai Bhatiya v. State of Gujarat*, (2005) 3 SCC 636 cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries a second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonised.”

12. In the light of above, in the instant case, the Family Court has rightly arrived at the finding that Ramta Bai is legally wedded wife of Johan Ram.
13. From the evidence on record, it is also clear that at the time of recording of statement, Johan Ram was aged about 62 years. At that time, he had owned 76 dismil of agricultural land. His first wife Kalindribai is also living with him. Looking to the social status of both the parties and financial status of Johan Ram, the grant of

maintenance of Rs.3,000/- per month in favour of Ramta Bai is just and proper and the same does not require to be enhanced.

14. Consequently, both the revisions are dismissed.
15. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(**Arvind Singh Chandel**)
JUDGE